

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Agilent Technologies, Inc.,

No. C-04-05385 JW

Plaintiff,

SCHEDULING ORDER PATENT CASES

v.

Elan Microelectronics Corporation, et al.,

Defendants.

The Court conducted a Case Management Conference on January 9, 2006. Present were Samuel K. Lu, counsel for Agilent and Elizabeth H. Rader, Gary C. Ma, and Michael Kim, counsel for Elan.

This case involves the same two patents ('780 and '804) as in the case of PixArt Imaging Inc. v. Agilent Technologies, Inc., which is also currently pending before the Court. With respect to the '780 patent, the Court has already held a Markman hearing and construed the claims asserted. Counsel for Elan represented that Elan has a slight disagreement with the Court's Markman Order of the '780 and that Elan has some additional terms it wishes to have the Court construe. Agilent does not believe there is a need for a second Markman hearing on the '780 patent. The Court grants Elan's request for a hearing on any residual claims or issues with respect to the '780 patent and sets

the hearing for **March 16, 2006 from 1 pm - 4pm**. With respect of the '804, the parties jointly request that they be given the opportunity to participate in the Markman hearing currently scheduled in the PixArt litigation for **March 17, 2006 from 1 pm - 4 pm**. The Court also grants this request and orders as follows:

A. Case Tutorial

1. At this time, the Court does not need a tutorial in light of what has been done in the PixArt litigation. If needed, the Court will issue an order in that respect.

B. Initial Disclosures

2. According to the parties' joint case management statement, the parties have completed initial disclosures required by Patent L.R. 3-1, 3-2, 3-3, 3-4(b).

C. Claim Construction Proceedings

6. According to the parties' joint case management statement, the parties have complied with Patent L.R. 4-1 and 4-2.

8. No later than **January 16, 2006**, the parties must file a Joint Claim Construction Statement and Prehearing Statement pursuant to Patent L.R. 4-3. The statement shall be presented in the following chart format:

| Disputed Term | Plaintiff's Proposed Construction | Defendant's Proposed Construction |
|---------------|-----------------------------------|-----------------------------------|
|---------------|-----------------------------------|-----------------------------------|

The parties shall express their proposed construction in a manner suitable for incorporation into a jury instruction.

9. Pursuant to Patent L.R. 4-4, all discovery, including depositions of expert witnesses, relating to claim construction must be completed by **January 23, 2006**.

10. The Court will hold Claim Construction Hearings on **March 16 and March 17, 2006 from 1 pm - 4 pm**. At the hearing the Court will consider only intrinsic evidence to interpret the disputed claims, i.e., the claims themselves, the written description portion of the specification and the prosecution history. Pertinent portions of the intrinsic evidence should be highlighted and indexed to the disputed claim language. No testimony will be allowed, unless the Court orders

otherwise, based upon a timely motion noticed for hearing at least 10 days prior to the Claim Hearing by any party wishing to present testimony. In addition, unless the Court orders otherwise, the Court Reporter will make a digital video of the proceedings. Any party wishing a copy of the transcript or digital video may contract the Court Reporter.

11. Notwithstanding Patent L.R. 4-5, the parties shall comply with the following briefing schedule:

a. Opening Brief: Agilent must serve and file its opening brief and supporting evidence on or before **February 9, 2006**. Accompanying the brief must be a proposed jury instruction which incorporates the language which the party contends should be adopted in construing the claims.

b. Responsive Brief: Elan must serve and file its responsive brief and supporting evidence on or before **February 23, 2006**. Accompanying the brief must be a proposed jury instruction which incorporates the language which the party contends should be adopted in construing the claims.

c. Reply Brief: Agilent must serve and file any reply brief and supporting evidence on or before **March 2, 2006**.

D. Further Case Management Order

12. At the conclusion of the Claim Construction Hearing, the Court will set a date and time for a further Case Management Conference to schedule subsequent events in the case.


E. Procedure Regarding Dispositive Motions in Patent Cases

13. Prior to filing any dispositive motion, the moving party must first advise the Court and opposing counsel of its intention to do so by filing and serving a request for a case management conference regarding dispositive motion(s). The request must outline the undisputed factual basis and legal basis of the proposed motion(s) and a proposed briefing and hearing schedule. The Court may schedule a case management conference to establish the schedule for briefing and hearing the motion(s) in an orderly and efficient manner or may issue an order adopting the schedule proposed by the parties.

F. Electronic Storage of Exhibits

14. This Court has available a digital and video electronic evidence presentation system. The parties are ordered to familiarize themselves with the system, and to meet and confer about whether the case will involve voluminous documentation. If so, as the parties identify documentary material which is likely to be used as trial exhibits, the parties are ordered to electronically store these materials in a fashion which will facilitate displaying them electronically during the trial. The parties are reminded that Civil L.R. 30-2(b) requires sequential numbering of exhibits during depositions and that numbering must be maintained for those exhibits throughout the litigation. Each proposed exhibit shall be pre-marked for identification. All exhibits shall be marked with numerals. The parties shall meet and confer on a division which will avoid duplication (e.g., Plaintiff: 1-99,000; Defendant #1: 100,000-299,999; Defendant #2: 300,000-500,000).

Dated: January 11, 2006



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Alan J. Heinrich aheinrich@irell.com
3 David Craig McPhie dmcphie@irell.com
4 Elizabeth H. Rader erader@akingump.com
5 Gary C. Ma gma@akingump.com
6 Hsin-Yi Cindy Feng cfeng@akingump.com
Morgan Chu mchu@irell.com
Richard Elgar Lyon rlyon@irell.com
Samuel Kai Lu slu@irell.com
Sang Hui Michael Kim mkim@akingump.com

7
8 **Dated: January 11, 2006**

Richard W. Wieking, Clerk

9
10 **By: /s/ JW Chambers**
11 **Melissa Peralta**
12 **Courtroom Deputy**